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HUSTINGS COURT OF PETERSBURG.

A. L. HAWSE v. AMERICAN BANK AND TRUST COMPANY.

June 24, 1918.

Taxation—Bank Stock.—Section 1040-a of the Code of Virginia, authorizes a holder of bank stock living in a county or city other than that in which is the principal office of the bank to list his stock for taxation with the commissioner of the revenue of the county or city in which he lives and provides that thereupon the commissioner of the revenue of the city or county of the bank's principal office shall deduct from the aggregate value of the bank's shares the aggregate value of the shares returned for taxation in the county or city in which the stockholder lives. Held, that the entire local tax upon the shares so deducted must be returned by the bank to the shareholder and not merely the amount of the tax paid by him upon his stock to the county or city in which he lives.

George Bryan, of Richmond, for plaintiff.

Wm. B. McIlwaine, of Petersburg, for defendant.

MULLEN, J.: This is an action of assumpsit brought by the plaintiff against the defendant, a banking association of Petersburg, Virginia, and was heard upon demurrer to the declaration, the material allegations of which are as follows:

On the 1st day of February, 1917, the plaintiff, who lived in Henrico County, Virginia, was the owner of one hundred shares of the capital stock of the defendant company; and that, in due time, he availed himself of the right and privilege conferred upon him under clause Three (3) of Section 1040-a, of the Code of Virginia, which is as follows:

"Whenever any commissioner of the revenue, before closing his assessment rolls or tax lists; shall receive from the cashier of a bank furnishing a list of the holders of bank stock, as required by law for the purposes of state taxation, or from the owner of any stock mentioned therein, a certificate of the commissioner of the revenue of the county or city of the State in which the owner of such stock lives, stating that certain shares of stock mentioned in said list are owned by a resident of that county or city and that the same have been returned for taxation for that year in such city or county, then the said commissioner of the revenue, to whom the said list of the stockholders of such bank stock has been furnished shall deduct from the aggregate value of the shares set forth in said list the aggregate value of the shares mentioned in said certificate. The shares owned by nonresidents of this State shall be taxed only at the place where the bank issuing the shares is located."

And returned his said one hundred shares of stock for taxation to the Commissioner of Revenue for said County of Henrico,

where it was listed, assessed, and the taxes assessed thereon paid by him, the amount of taxes so paid by him being \$106.00.

If these shares had been listed and assessed in the City of Petersburg, the tax thereon would have been \$121.90. The shares of stock held by the other stockholders were so listed and assessed, and the taxes thereon paid by the defendant corporation, and the amount so paid charged up to the general expense account and not against the respective stockholders.

The plaintiff thereupon demanded of the defendant Company that it pay him the like amount, to-wit, \$1,219 per share, it had paid for the other shareholders out of the general funds of the Bank. This the defendant Bank refuses to do, but has offered to pay him the actual amount (\$106.00), he paid out in settlement of his taxes in Henrico County.

At first, the Court was inclined to adopt and act upon the contention of the defendant. But the tax assessed is not the obligation of the Bank, but of the individual shareholder. It is the stockholders who are assessed and not the Bank. It is true the Bank is required to pay into the Treasury the taxes assessed and listed by it; but the statute expressly stipulates the Bank may reimburse itself out of any dividend or other fund in its custody belonging to the stockholder, and apply the same to the payment of the tax assessed, and when thus applied it shall be acquitted and discharged from all liability to the stockholder for the money thus disbursed. The Statute (Revenue Act, Secs. 17 to 22) does not contemplate that these taxes shall be paid out of the general assets of the Bank, nor that the funds of shareholder A. shall be applied or used to pay the taxes of shareholder B. or of any other shareholder; but each, and the respective funds of each, are responsible and liable for his own taxes and none other. It contemplates a separate accounting with each owner of stock for the money so disbursed for him. Had this been done, then the plaintiff would be entitled to nothing from the Bank for the taxes paid by him; as the general fund, in which he was interested, along with the other owners of stock, would not have been depleted by the payment of such taxes. But there was no separate accounting with each shareholder, the total amount so paid by the Bank being disbursed, not out of the individual holdings of each shareholder, but out of the general assets of the Bank and charged to the general expense account.

Under this arrangement, each shareholder, whose taxes were paid by the Bank out of its assets, received from the Bank \$1,219 on each share held by him; whereas, the plaintiff has received nothing, such payment being in the nature of a dividend.

It therefore follows that, in order to make him an equal beneficiary with the other shareholders in the assets of the Bank, he should be paid by it a like amount, to-wit, \$121.90, with interest; and the Court so holds. Demurrer overruled.